

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 7:98-998-HMH
vs.)	C/A No.7:05-02784-HMH
)	
Joseph Byrd, Jr.,)	OPINION AND ORDER
)	
Movant.)	

This matter is before the court on Joseph Byrd, Jr.'s ("Byrd") motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. After a thorough review of the facts and pertinent law, the court summarily dismisses Byrd's § 2255 motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 9, 1999, Byrd pled guilty to one count of conspiracy to possess with the intent to "distribute and to distribute a quantity of cocaine and a quantity of cocaine base (commonly known as crack cocaine)." (Indictment Count 1.) On March 16, 2000, Byrd was sentenced to three hundred sixty-five (365) months' imprisonment. Byrd appealed his sentence. On January 6, 2003, the United States Court of Appeals for the Fourth Circuit vacated Byrd's sentence and remanded the case with instructions to re-sentence him after determining whether Byrd was a career offender. See United States v. Byrd, No. 00-4265, 2003 WL 40747, at *5 (4th Cir. Jan. 6, 2003). Byrd was re-sentenced to one hundred thirty-five (135) months' imprisonment on June 23, 2003. Byrd did not appeal this sentence. On August 3, 2004, Byrd filed a § 2255 motion. That motion was summarily dismissed on

August 30, 2004, on the merits. See United States v. Byrd, No. 6:04-21844 (D.S.C. Aug. 30, 2004). The instant § 2255 motion was filed on September 20, 2005.¹

II. DISCUSSION OF THE LAW

Byrd previously filed a § 2255 motion, which the court summarily dismissed on August 31, 2004. As such, the instant § 2255 motion is successive. “[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)); see also 28 U.S.C. § 2255 (West Supp. 2005) (“A second or successive motion [under this section] must be certified as provided in section 2244 by a panel of the appropriate court of appeals . . .”). Byrd has not obtained authorization from the appropriate United States Court of Appeals to proceed with a second or successive § 2255 motion. Therefore, this court lacks jurisdiction over Byrd’s § 2255 motion, and the motion is summarily dismissed.

It is therefore

ORDERED that Byrd’s § 2255 motion, Document no. 1, is summarily dismissed.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
October 3, 2005

¹ See Houston v. Lack, 487 U.S. 266 (1988).

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.